

Quid Novi

McGill University, Faculty of Law
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LOOSE TALK CAN COST LIVES!



CB 2004

*Please don't gamble with your life and risk being googled.
Don't write for the Quid.*

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QUID NOVI

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Week in Review...

President Bush accused Senator John Kerry of using "old-style scare tactics" in his campaign for president; Vice President Dick Cheney warned that John Kerry isn't strong enough to win the war on terrorism, especially if a nuclear bomb goes off in the middle of an American city. Senator John Kerry killed some geese in Ohio and showed reporters his bloody hand to prove it. Tribal sheiks from Falluja asked the Americans to please stop bombing their city, and a National Guard jet accidentally bombed a hiking trail in Pennsylvania. The U.S. 9th Circuit Court of Appeals ruled that the world's whales had no standing to sue President Bush over the Navy's use of sonar equipment that kills them. In a dry run of their Election Night coverage, Fox News declared the St. Louis Cardinals the winners of the 2004 World Series.

"I'm not like other guys," Michael Jackson sang in "Thriller," the 1982 hit song, video, and album. He has tried to buy the bones of the Elephant Man, transmogrified himself through cosmetic surgery, sometimes dresses like the military ruler of Freedonia, and calls his home Neverland. He is also charged with molesting a cancer-stricken boy at his California home in 2003. Mr. Jackson is also unlike other guys in that last month he was the subject of a two-day academic conference at Yale University: "Regarding Michael Jackson: Performing Racial, Gender and Sexual Difference Center Stage." In related news, researchers at Yale University successfully grew human testicular tissue in mice; the goal of the research is to harvest sperm from the tissue so that pre-pubescent cancer victims can preserve their fertility.

The state government of Utar Pradesh in India investigated reports that the Taj Mahal is leaning. Six Buddhist monks from Ratchaburi, Thailand, were arrested and defrocked for holding wild drug and alcohol parties. German archeologists unearthed Martin Luther's privy. New calculations suggested that gravity may not be a constant after all.

J.M.

Editor's Page: Terminal

by Jason MacLean, Co-Editor-in-Chief (Law II)

Law school triptych: In the first year, they scare you to death. In the second year, they work you to death. In the third year, they bore you to death.

Boredom. "The events which I am now going to relate may create the impression of a crisis of very ordinary jealousy; and indeed, if my behavior during that time had been observed by a spectator of little perspicacity it might well have appeared to be that of the stock victim of jealousy. But it was not like that." So wrote Alberto Moravia (*Boredom*). You can no more possess a beautiful woman than time or truth. And so it goes.

The routine takes hold throughout the month of October. Cab ride to the airport via Central Park and Harlem. Check-in at the Air Canada automated kiosk (good idea) and then go (butt in) to the head of the check-in line to get boarding pass stamped (less good idea; you can feel the resentment sear so many tiny holes in your back as you walk away but you don't care because you used the automated kiosk and, confirm, you're better than all of them - I am well aware how small a thought this is), and head to gate A5 (always A5). I'm as white as white gets so security is all breezy banter (Air Canada's automated kiosk is a Mossad interrogator by comparison).

Agonizing choice of what to buy to read (no matter how many books and articles and magazines partly or wholly unread I have with me already, I have to buy at least two newspapers and one magazine, and perhaps a book, too, each and every trip) and what to eat and drink. This sounds easier than it is. Boarding pass and passport have to be secure but at the ready, which is not so hard but nonethe-

less a consideration, a *concern*. Add to this a side bag already over-packed and a garment bag to continually re-adjust over your shoulder. Luisa is slouching behind the counter of the *Au Bon Pain* stealing a couple of pages at a time of Minette Walters' *The Ice House*. *It was evident, if there were no other entrance to the ice house, that the body had at some point traversed this thorny barrier ... The big question was, how long ago?*

Backstory: New Yorkers, like the people of any place of any size, cherish their myths and brook absolutely no rational cross-examination. Departure time is 7:50 P.M., always. Tell any New Yorker this and ask when you should make your way to the airport and he will tell you 5 P.M. at the latest. *Traffic is murder. That's a bad time of day*. So you flag a cab, or a cab flags you, rather, and you're off. You arrive at the terminal at 5:42 P.M. and you've got *time on your hands, bills in your billfold, choices to make*.

The Times, the Journal (never sells out), the Observer. The Economist, or, if it is a Monday, the New Yorker. Michael Lewis' *Moneyball*. The Barnes & Noble Classics edition of *The Idiot*. A ridiculously large coffee, way beyond *vente*, a turnover (but only after a brief, guilt-ridden, and ultimately insincere ogling of the apples and bananas on display off to the side) and I'm on my way, not yet all the way to gate A5 because it's 6:02 P.M. but to gate A3 (typical departures are Cleveland and L.A.) and its surplus of empty front-row seats to watch Lou Dobbs Tonight until 7 P.M. and then catch the first half hour of Anderson Cooper 360° and wait patiently to die.

Amid an unfinished (because lukewarm) coffee and sundry unread reading matter, I live and die many times over,

Lou Dobbs Tonight and Anderson Cooper 360° and the CNN Airport Network phalanx as my (only) witnesses. Time becomes infinitely divisible, each moment distends. You count them down, the commercial breaks, and you begin to sense their arrival, yet you feel it will be a long time before the next one, still longer to the one after that, and so on like this until 7 P.M., and then again until 7:30 P.M. You ask the man sitting a few seats over, whose reason to live you cannot even begin to imagine, an irrelevant question and take great interest in his answer. You take a walk over to the window, gaze out without really looking at or apprehending anything in particular, and return to your seat, all the while affecting a lack of concern for your belongings you left back on your seat. Suddenly you feel very hungry; you count your change and see if you have enough for *something*. Sometimes you do, and sometimes you don't, and it never actually makes any difference.

From 7:30 P.M. to 7:40 P.M. I pace in front of gate A5. I'm usually seated in the first third of the plane following business class and always next to a window (thank you, automated kiosk) but I try to board last.

Time to go. Someone doesn't want to stop using his blackberry, and I wonder about portable printers and who has them and what you would print on a plane. I prefer large jets, they take flight so much more confidently, assertively. They're noisy enough that you don't feel like you're falling - or worse, *hanging* - when the plane tilts to the left. The city's myriad spires and gargoyles and inscrutable hustle (*New York = energy*) explode into view beyond the impossibly shabby looking gray wing and you wonder, you doubt, whether you were really there at all. ■

160 Missing Persons Reports Filed Due To Disappearance Of McGill Law I

by John Ramsay (Law II)

One hundred and sixty missing persons reports were filed with the Montreal Metro Police following a third consecutive Coffee House marred by a perplexing lack of attendance on the part of McGill Law's first year class. The report, filed by representatives of the second, third, and fourth year classes, alleges an "astonishingly rapid decline in frosh enthusiasm for Coffee House" caused by "dangerous addiction to the drug known as 'legal meth'".

Esteemed Prof. Rod MacDonald was baffled by the alleged non-attendance, admitting that many new students may have been concerned and/or scared by his newest addition to the Democracy Wall, a picture depicting a lawn mower operated by a monkey with the caption "is this the law" directly below. When pressed to address the legal meth controversy, an irritated MacDonald said "I have no case

comment. I mean comment".

The first-years' truancy drew the ire of many upper-year students. Mike Brazao, a faculty socialite of distinctly pleasant odour commented: "It's un-fucking-real man. Do these clowns think they can just waltz into the sponsored coffee houses without having to suffer through the non-sponsored ones with us upper years?" Local scallywag Aaron Chase threatened: "Look, these kids are screwed. If they don't start showing up for these things, I think we should hold out on summaries. It's the only way they'll learn. I mean, c'mon, at \$2 a beer you can't afford to not drink. I gotta split Ramsay, there's gotta be a dozen bitches in this room in need of a Chassage." Added Chase, "The Chase is on!"

LSA President and ball hockey aficionado "Right is" Mike Hazan added that he feels he has failed as president to incorporate the rookies into the fold. "It

just doesn't make any sense. I could have done more. I could have sent out more postcards. I could have scheduled more sponsored coffee houses earlier in the season. You see this ring, John? This ring is worth at least ten beers. That's ten more beers we could have offered to the first years. And this watch, it could have fetched us at least four more bags of snacks to further entice them. Why? WHY!? WHHHHHYYYYYYY!?!?!?"

Montreal Metro Police have given assurances that they will look into the disappearance as soon as they are finished their current priority - a massive sting on the more serious problem of jaywalking in a city without crossing lights. "Ecoute, John, y'a pas grand chose qu'on peut faire tout de suite. Y'a une estie'd foule qui'sse promène s'a rue sans penser aux autos pi aux bicycles." Added the officer: "Stie". ■

Feeling Stressed? It's That Time of Year!

By Mariam S. Pal (Law III)

There was an interesting article in the Globe and Mail the other day that caught my eye. The headline read "Universities ease exam stress with pillows and pet breaks". Well I just had to read the article. Apparently, it is undergraduate midterm exam stress season all across Canada and universities have finally woken up to the fact that this may actually affect students in a negative way. The answer you may ask? Well if you happen to be an undergrad at the University of Alberta then you're in luck. The U of A provides pet therapy to students in the form of a golden retriever and little white terrier who are available for petting, snuggling and playing. They even set up a booth with crayons,

colouring books and hula hoops! Other universities provide relaxation seminars and workshops on breathing techniques.

Well, all this got me to thinking. For most of us law students, midterm exams are not much of an issue. My theory is that the Faculty administration decided on 100% finals in order to save us the stress of midterm exams. Very thoughtful. But then they throw in legal methodology in first and second year and you know, now that I'm in third year, just not having that course makes me feel so much more relaxed. But I rather like the idea of pet therapy, being a dog lover myself. Just think of it, on a cold snowy day in December, feeling stressed over all those 100% finals and overwhelmed by the

amount of work that you didn't do all term, wouldn't it be nice to trot down to the atrium and shake paws and have a cuddle with Fido? I'm not sure about the hula hoops but perhaps it's time a law firm donated some massage chairs and the services of a massage therapist to the students. We all have enough highlighters thank you. In the meantime, most law students will stick to tried and true measures of stress release, such as dramatically increased intakes of junk food and coffee, taking up smoking and catching up on sleep in the library or in one of the atrium sofas. Or we could go to the University of Alberta... ■

Letter to the Editor: In Defense of an Angel

by Aaron Chase (Law IV)

I was shocked to read self-appointed faculty comic Mike Brazao's attack on Aaron Chase in last week's edition of the Quid Novi.

"I apologize for any harm I might have caused to Mr. Chase's impeccable reputation", said noted Constitutional Law expert and walking oil reserve Brazao in a recent conversation with the author. "But I gotta jet now. There's a sale on rugby-themed T-shirts, ripped sweatshirts, stained sweatpants and white sports socks at the Salvation Army and you know I GOTTS to look good for the big bash at the shelter tonight. Plus, I gotta swing by the Home Depot to pick up some garden shears to trim my back. Looking this good doesn't happen by accident, you know."

Brazao, a slovenly, slandering alcoholic in his fourth year at the Faculty of Law, claimed the article was written after a particularly difficult Coffee House experience, when he was filled with what, even for him, was an unusual amount of bitterness. "I was wasted and decided, for a change you know, that I would get really aggressive. When no girls were impressed by my incredible ability to recite every Ice Cube rap recorded between 1988 and 1992, I stumbled over to Mark Antaki and gave him a solid shove to the mid-sweater. 'Didn't I

deal with you a couple of years ago?' I said. I think I need help."

Prof. Antaki confirmed that Brazao had indeed tried to "deal with him" during a Coffee House in 2002. "I remember he had just confronted Dean Leuprecht when he came over to me. He said, 'Hey Antaki! I just kicked that Kraut Leuprecht's ass like it was 1945. You want some of this, Boulton Boy?' He reeked of alcohol and feces and I tried to get away without him touching me, but I couldn't. He shoved me up against a wall and demanded that I explain the division of powers concept to him. I tried, but three hours later he was just as confused and drunk as when I started. He said, 'I have to go call Ralph on the porcelain telephone' and bolted for the bathroom."

During my conversation with Brazao, a tear sprung from his eye and attempted to roll down his grizzly mug, but made it only as far as the top of his facial-hair line, about 2 mm below his eye socket. "What can I do to attract women?" said Brazao, by this time bawling rather pathetically. "Do I need a new technique? Is there something else I can do besides threatening to file grievances if they won't go out with me? I tried to ask out Nobel Laureate Shirin Ebadi last week, but her translator told me that she would rather subject Iran to 500 more years of oppression

than spend 5 minutes with my camel-like physique and odour."

When the author suggested he reduce his level of bitterness, Brazao reacted with his trademark bitterness. "You're goddamn right I'm bitter! You'd be bitter too if you spent four years in law school and all you had to show for it was a string of D's, a job as a 'sanitary engineer', a vicious case of Estonian Herpes and a reputation for soiling your drawers. Fine! I'll try it. I'd do anything to avoid another Friday night at home sitting in front of my S.A.D. lamp nursing a bottle of Olde English."

Later that night the author spotted Brazao at Thompson House trying out his new style. The author overheard him speaking in delicate tones to a blind exchange student from Finland. "So, baby, did I tell you I know Aaron Chase? Yeah, that's right. He's actually a friend of mine. Say, what do you say we head back to my place to 'Finnish' this conversation, if you knows what I means."

"Vad?", said the co-ed. "Hoopen floopen den poopen?"

"Whatever," said Brazao, stumbling away from her. Moments later he was seen grinding with a lamp shade. "Ooooh baby... You're just as hot as my S.A.D. lamp," he said with his eyes half shut and spittle dribbling down his chin. ■

Public Opinion Polls: 85% of Law Students Think Brazao and Chase Should "Just Get a Room."

by Heather Graham (Law IV) and Tara Berish (Law III)

The student body has become increasingly embarrassed by the public displays of affection to which Mike Brazao and Aaron Chase have subjected the Faculty of Law. It has become painfully obvious that the only thing they crave more than the warmth of the other's embrace is to see their names in print.

The poll was prompted by a surprising development in the affair on Tuesday afternoon during Professor Bachand's Evidence class. Students throughout the

class could be seen considering the documentary evidence of the pair's burgeoning love in the latest issue of the Quid. Before Bachand could ask Elise to give her learned opinion on a particularly hot topic in the common law of evidence, the class's attention was abruptly diverted. Witnesses describe the scene as disturbing. "I was shocked and appalled," said one CEGEP student, "his drooling proclamations of love for Brazao during his afternoon nap were highly disruptive".

Student response to the saga was incendiary. 5% of those polled believed that Brazao and Chase are attention-craving megalomaniacs. Another 8% were pleased by the distraction as Coffee House overlaps with The O.C.'s new time slot. By far the largest sampling believes that the two should "just get a room already." Finally, 2% of students were offended that Brazao and Chase's steamy affair has only been carried on in English. ■

The South Korean Legal System In A Nutshell

By Jay Choi (Law II)

This is the third piece in the Asian Pacific Law Association McGill (APLAM) series of articles pertaining to Asian legal systems. For more information about APLAM please e-mail Marcelo Garcia (marcelo.garcia@elf.mcgill.ca) or visit us online at: www.law.mcgill.ca/students/clubs/aplam.

Korea's current legal system originates from the Kabo Reformation, initiated in 1894, at the end of Chosen Dynasty. The reformation brought the enactment of a written constitution, and served as a westernization of an already ancient judicial system, implementing new concepts such as rule of law, democratization of legislative process, and most importantly separation of powers.

It is clear that already in the fourth and fifth century A.D., the three kingdoms of the Korean peninsula possessed a system of acts and subordinate statutes, which were to be exercised, interpreted and enforced by the Executive or the tribal councils. A unified Koryo (??) of the tenth century developed a more complex judiciary with a central court dealing with statutes, regional courts concerned with civil matters, and appeal courts. Finally, during the Chosen dynasty, more specialized courts were instituted which covered exclusive jurisdictions such as real

estate, treason or slavery.

The Korean judiciary system prior to Japanese occupation was heavily influenced by Chinese policymakers; and it was essentially the Chinese system that was adopted in Chosen. It is important to remember that Korean courts were very different from today's Western counterparts. Despite the absence of political concept such as rule of law, there were sophisticated apparatuses of self-regulation, some comparable to today's ombudsman, which rendered difficult, but not impossible, the tyrannic use of power by the monarch. Most notably prosecution powers were given to different rival institutions, so to create a certain balance of power that would preserve the political neutrality of the courts.

It is during the Japanese colonial rule of the early twentieth century that Korea adopted a civil law system close to the French and German ones. But following the liberation in 1945, basic laws in area of labour and banking law were influenced by American legislation; and there were efforts to remove all traces of Japanese occupation. As a result, today's Korean legal system possesses structures of both civil and common law traditions.

Korea is a country governed by the rule of

law, as enshrined in the Constitution of 1948. This constitution provides for the independence of the judiciary under the principle of the separation of powers. The source of law may be divided into five classes: 1) Constitution; 2) Statutes and Presidential Emergency Orders; 3) Decrees, National Assembly Regulations, Supreme Court Regulations, Constitutional Court Regulations; 4) Ordinances of the Prime Minister, Ministerial Ordinances; 5) Administrative Rules, Municipal Ordinances. Despite American influences, precedents are not to be binding on lower courts, although they are in practice. Most noticeably, Korea adopted a method of absorption and revision rather than one of U.S. style amendment. New laws are hence absorbed into the new one as opposed to having two separate laws.

Recent efforts for reform are concentrated in areas of trade and finance laws, where membership of WTO, OECD, and the IMF crisis pushed for vigorous macroeconomic policy changes. As Korea entered a genuine state of democracy after years of military dictatorship, the Korean people are demanding higher standards of social justice, as demonstrated in recent decisions that allowed dispensation with military service for religious reasons. ■

Traditional Legal Thoughts In Korea - Part 1

by Jay Choi (Law II)

This is the fourth piece in the Asian Pacific Law Association McGill (APLAM) series of articles pertaining to Asian legal systems. For more information about APLAM please e-mail Marcelo Garcia (marcelo.garcia@elf.mcgill.ca) or visit us online at: www.law.mcgill.ca/students/clubs/aplam.

It is largely undisputed today that the current law of Korea is a product of legal transplantation. Since Korea first came into contact with the Western law in the 1880's, its legal system underwent rapid changes of "modernization" and "westernization" imposed by the Japanese occupation. As a result, we understand today's Korean legal system as one belonging to the civilian tradition along with China and Japan (see previous article for a short historical

account on the South Korean legal evolution).

It is often asserted that traditional legal concepts are of no particular use in a modernized and westernized system, assuming a certain discontinuity between tradition and modernity. This is however to ignore the different faces of the law: in addition to its institutional dimension, the law possesses a spiritual and philosophical dimension that is worth being explored. The law, as an effort to symbolize human interactions as governed by norms, is more than a collection of constitutions and statutes.

The law of Korea may have been influenced by the German BGB, the Japanese customs of adjudication and administration, or the Anglo-Saxon commercial codes; but it does not make the Korean legal system a Western one. Once we perceive the law from

its spiritual and philosophical dimension, departing from a strictly positivistic view, we can cast doubt on the idea that the law, as understood in Korea, has changed overnight with the adoption of Western legal customs.

Traditional legal thoughts of Korea are not only relevant for legal historians but to all Korean jurists who are interested in the origins of today's Korean law, be it state-sponsored, family based or existing in churches and temples. Interestingly, after decades of earnest efforts to "catch up" with the Western nations through globalization and "modernization", many Koreans now come to realize that some of the answers to their juridical questions may come from their own traditions.

In this article, we wish to explore the spiritual and philosophical dimension of the

Korean law by presenting a brief overlook at the traditional legal thoughts as they proliferated in ancient, medieval and modern periods.

I - Ancient Thoughts of Law

A. The Etymological Origin of the Law

Scholars recognize today the existence of an East Asian *jus commune*. This is characterized by the fact that East Asians all use the same Chinese character to refer to the idea of "law". Taking an etymological interest in this, we remark that it is in fact a composed character that is made up of three other parts: water, unicorn and going away.

"Unicorn" for judgement: Ancient Chinese courts are said to have used Hsieh's (unicorns), an imaginary and mystical animal that systematically stroke the guilty party with its corn, to convict people. The unicorn here seems to represent the ability of discernment and decision-making.

"Water" for equity: discernment is made according to a certain set of values. In this case we want to judge like water flows, that is to say in the most natural way possible. It is my speculation that this "natural" form of justice translates into equity.

"Removal" for sanction: once the judgement is rendered according to societal values, and the discernment made between good and evil, the unrighteous is to be purged.

One could therefore come to the conclusion that the character "law" etymologically means "to judge equitably like water flowing as to remove what is unrighteous".

That having been said, some historians assert that Korea and Japan had separate, more "indigenous" words for "law" before they adopted the Chinese word *fa*. During the Silla dynasty (BC 57 - AD 935), the Korean word *bon* was used but it is unknown as to how it represented "law" and when this specific meaning fell into desuetude. *Bon* somehow evolved to mean in contemporary Korean an "ideal", something close to the "Ideal Type" of Weber. Before they adopted Chinese customs, the Japanese on the other hand used the word *nori*, which refers to Shamanistic behaviours. Given the cultural

similarities between Japan and Korea, one can speculate that the ancient meaning of *bon* was closely linked to religion and spirituality.

The concept of East Asian law is therefore far from being secular. Although there is no evidence of a "god-made" law in China, like Hammurabi's or Moses', we see that the origin of law in Korea had some religious character. The Shamanistic laws probably became more "secular" as they came into contact with Confucianism.

B. Korea's Founding Mythology: the Myth of Tangun

The following summary by Tae-Hung Ha and Grafton Mintz gives us some hints about the primitive legal concepts that are distinctively Korean. The oldest existing record of this foundation myth appears in the *Samguk Yusa*, a 13th-century collection of legends and stories.

In ancient times, Hwanung, the son of Hwanin, desired to descend from Heaven and to live amongst men. His father, realizing his son's intention, chose Taebaek Mountain among three great mountains on which to descend, and saw that mankind would greatly benefit.

Taking with him three thousand of his followers, Hwanung descended upon the peak of Taebaek beneath the Sacred Sandlewood Tree. That area was called the land of God and he was known as Hwanung Chonwang [Heavenly King]. Together with his ministers of wind, rain, and cloud, Hwanung instructed mankind about agriculture, preservation of life, curing of disease, punishment, and the difference between right and wrong, in all some three hundred and sixty kinds of work.

At that time, there was a bear and a tiger that lived together in a cave. They prayed incessantly to Hwanung saying, "Please transform us into men." Then Hwanung gave them some mugwort and twenty pieces of garlic and said, "If you eat this and do not expose yourself to daylight for one hundred days, you will become a human being." At the end of twenty-one days, the bear became a woman. The tiger, unable to endure the trial, did not become a man.

As there was no one with whom the

woman Ungnyo [Bear-woman] could marry, she constantly visited the base of the Sacred Sandlewood Tree to pray for a child. Hwanung gave into her prayers and decided to marry her. A son was born who was called Tan'gun Wang'gom. In the fiftieth [sic] year of the Emperor Yao, Tan'gun established a city at Pyongyang and called the nation Choson. He later moved this city to Asadal on Paeg'ak Mountain, which was also known as Kunghol Mountain. He governed [there] for 1,500 years.

C. Elements of Legal Thoughts

There are several legal elements that are conceived in the Tangun mythology. Many of these "ideals" still strongly persist and continue to exert significant normative influence on the daily behaviours of Koreans.

The humanitarian ideal of Hongik Ingan, "a man who gives benefit to human kind", is captured in the idea that Hwanin descended from heaven "[seeing] that mankind would greatly benefit" from it. It forms the ideal type of Korean existence that is to be beneficial towards others as opposed to egoistic. The Declaration of the Fundamental Educational Principles of Korea in 1949 and the second article of the Education Law (1951) are examples where Hongik Ingan is entrenched as the fundamental basis for education:

"Education shall aim to enable every citizen to lead a life worthy of humankind and contribute to the development of a democratic state and the realization of an ideal of co-prosperity by ensuring that one builds character and is equipped with independent abilities for living and necessary qualities as a democratic citizen under the humanitarian ideal [Hongik Ingan]." ■

SUBMIT TO THE QUID (or not)
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Can You Spare 30 Seconds and 75 Cents?

by Lindsey Miller (Law III)

By now, you've probably heard the story of the South Shore girl who was raped, beaten, and left for dead on the icy banks of the St. Lawrence River. It is a horrific tale of betrayal and violence. The girl snuck out one evening to hang out with her friend Steve, who had brought his friend Frederic along. They drove down to the river, where Steve held her down while Frederic raped her. Afterwards, they told her they were going to kill her. When she refused to put her head into the river so they could drown her, Frederic bashed her head with a rock. She escaped and swam through frigid waters to the safety of a tiny island. After awhile, Steve called across that Frederic had gone and that she could come out - that he would take her home. She swam back, only to find that Frederic had not left. They beat her again and made her strip. She managed to break away a second time, swimming out to her island. She stayed there, naked and wet in the cold November night, until she was sure they had left. She then swam to shore and walked three kilometers before finding a house that would take her in. Frederic is now on trial for sexual

assault, forcible confinement, and attempted murder. Steve has pleaded guilty to forcible confinement and aggravated assault.

This is a gruesome story, and unfortunately, all too common. Though not all sexual assaults involve the same level of callousness and violence as this one, most sexual assaults - between 69% and 83% - are committed by people that the survivor knew. As many as 1 in 4 women will be sexually assaulted in their lifetime, and 3 in 20 men (usually before the age of 13). Think of it this way: in a typical first year law class of 70 students, about 12 of your classmates will be sexually assaulted at some point in their life, mostly likely by somebody they know and trust.

One of them might be you.

While the statistics are scary, there is a lot that can be done. On campus, the Sexual Assault Centre of the McGill Students' Centre provides outreach programs and support groups, runs a helpline (398-8500), offers workshops and raises awareness about sexual assault. They aim to provide services for the particular needs of women, people of colour,

gay, lesbian and bisexual survivors, people with disabilities and those with low incomes.

The Sexual Assault Centre needs your help. They are funded by students through a 75¢ per term fee. You red it right - 75 cents. The fee must be renewed by referendum every three years, and this year it is up for renewal. I would encourage you to vote for the renewal. Unless more than 10% of undergraduate students vote, the referendum will fail, so every vote counts.

Voting is fast and easy. Just go to <http://ssmu.mcgill.ca/elections/elections.htm> and click on 'Vote Now.' The polls will be open until November 3rd. Between November 1st and 3rd, you can vote by paper ballot in the lobby of the Shatner Building, the Redpath Library and various other locations around campus.

Please vote. It will take you 30 seconds and 75 cents to make a huge impact on the lives of the survivors of sexual assault.

For more information, visit <http://www.ssmu.mcgill.ca/sacomss/> ■

Walking and Talking Property in Montreal

by Travis Chalmers & Jason MacLean (Law II)

Professor Robert Godin is famous in our faculty for the at once nostalgic and cheerful way he describes real estate projects that he's worked on in Montreal. Not only do his stories help to make the first year course Civil Law Property more entertaining, they are irreplaceable as learning tools for some of the more abstract legal ideas (e.g., emphyteusis, hypothecation) expounded in the Quebec law of property. Almost a year ago, Aleks Zivanovic and Jason MacLean approached Professor Godin with the idea of putting a tangible twist on his tales.

The experimental Walking Property

Tour, conceived and hosted by Professor Godin and several lawyers from his old firm, Fasken Martineau, was the end product of that tentative suggestion. For all those that were fortunate enough to attend, it was a rousing success.

The day was divided into several segments, each of which was presented by a different practitioner of real estate law at Fasken Martineau. The first segment concerned the issue of negotiating a purchase agreement for Cité du Multimédia (www.citemultimedia.com). Lise Rochette, whose practice extends to all aspects of real estate operations, and Isabelle Durand, a

specialist in property financing and development, took us through the ins and outs of negotiating an agreement between two parties for such a high-value transaction. Such contracts are not at all like the proverbial purchase of a bus ticket - every item, no matter how seemingly minute, must be negotiated with utmost care, every potential conflict duly and diligently foreseen. And that's not counting the title search and opinion spearheaded by Christine Malenfant.

The second segment concerned the actual financing of the Cité du Multimédia transaction. It's all fine and good if the parties agree to the transaction, but if the ►

Walking and Talking Property in Montreal Continued ...

purchaser does not have enough liquid assets, it must acquire them by way of loans. Verna Cuthbert, a senior lawyer and partner in the Fasken Martineau Montreal office whose wide area of practice includes commercial joint ventures, financing, and real estate development in both Ontario and Quebec, led us through the complicated (and creative) process of raising money (\$90M in the case of this transaction) to meet the seller's asking price and, at the same time, satisfy both the buyer's and the seller's wishes regarding the tax implications of the project's financing structure.

The third segment of the day, which was presented by Claude Gendron, a partner and long-time colleague of Professor Godin at Fasken Martineau, looked at the recent development of the Quartier International (which includes Centre CDP Capital and Hotel W), just east of the Stock Exchange Tower (the sale and acquisition of which Mr. Gendron was also involved; see www.qimtl.qc.ca). The Quartier International, an initiative of the Caisse de dépôt, was a huge project that sought to establish a connection between Old Montreal, Cité du Multimédia, St-Jacques, and the Downtown Core (McGill Avenue) funded largely by the many land owners in the area. A small list of issues that had to be resolved just to get the work started included:

1. How much would the project cost?

2. Will the government help? If so, by how much?

3. What portion of the bill should each owner pay, if any? (Equal share? Per square foot share? Per land value share?) Eventually, after considerable negotiation, the Association des riverains, a non-profit regrouping of the 30 real estate owners of neighbouring properties agreed to a taxation formula of 33% per street frontage, 33% per square footage, and 33% of the municipal assessment. Seems simple enough, but arriving at this formula was no mean accomplishment.

4. How to convince the owners to pay the projected cost?

5. How to develop in harmony with the historic servitudes in the area?

It takes rather a lot to get dozens of people to agree on how to fairly split up a multimillion dollar renovation bill.

The beautiful renovations installed convinced the Caisse to relocate their headquarters to the area, in a stunning new building. The CDP Capital building is a marvel of engineering and architecture, as well as a feat of legal refinement. It is built directly above the Ville Marie tunnel, so the weight of the whole structure must be shifted away from the top of the tunnel. Its atrium, which is eleven stories high, includes tapered triangular beams running from the subsoil to the (almost) zenith that bear much of the building's weight. Professor Godin was startled by the enormity of the wide-open, unused space. "This would never be done in a commercial setting," he said. The land in this area is very valuable. Put mildly, one is struck by the grandeur of the place. As long as you're not afraid of heights, that is.

The lands under which the Ville Marie was built are crown lands. This is one of the reasons for which many crown buildings are close to the tunnel - no further expropriation was required, no need to pay the people for stealing their property! The CDP building, though, is privately owned - a servitude was established allowing them to construct from a certain level below sea level up to the zenith - the crown maintains control over the space below that. To - uh - simplify matters, describing the servitude was so technically difficult that it required GPS technology. All of which was ably explained by Fasken Martineau municipal law expert Marc-André LeChasseur.

For the final segment, Fasken Martineau's Anne Drost and the event's co-chair Richard Clare presented their work on a large NDG cooperative divided co-ownership project: Benny Farm. The development was originally created to house WWII veterans, but its usefulness in that regard had diminished over the years. The city, however, imposed several requirements for the new development: it had to maintain the same colour scheme and use the same brick type,

as some of the buildings were deemed historic. The development also had to ensure that a certain number of units be priced to qualify as "socially affordable housing" so as to be sensitive to the diversity of the NDG community; a servitude was also established to ensure that remaining seniors can continue to tend to the development's garden and, best of all, continue to enjoy the development's wide-open spaces. Especially interesting was the creative, unorthodox drafting of the divided co-ownership's declaration so as to protect the cooperative, environmental, and social aspects of the project. The future legal efficacy (i.e., third-party opposability) of the declaration, as Professor Godin's incisive line of questioning made clear, is far from certain. The declaration, however, is nonetheless a fascinating example of the creative and constructive use of property law to achieve both commercial and social objectives.

At the end of the day's presentations, there was a palpable reluctance on the part of everyone to leave - we were all having a blast talking about property around Montreal, in all its technical and practical glory. All this from the Civil Code of Quebec Book on Property. Awesome.

Because of the success of this experiment, the McGill Business Law Association is now contemplating a series of similar annual events, under the tentative title "Business Law 3D." It will, in theory, allow students interested business law to see how their course material is put to use in the real world, which is often far-removed from the otherwise intellectually rigorous academics of the McGill Law Faculty. Stay tuned.

On behalf of everyone in attendance, we'd like thank Professor Godin and his colleagues at Fasken Martineau for giving us a fuller understanding of property law as a practice that shapes our environment every bit as much as architecture, engineering, and urban planning. We also left Fasken Martineau impressed with the talent, the professionalism, and the genuine enthusiasm of its Real Estate Law Group lawyers - they're the kind of people that law students taking the law-firm career path hope to work with and emulate. ■

The Force Is With You... Now Get With The Force!

by Kirsten Mercer (Law II)

Okay, so first things first... My deepest apologies to my loyal readers and, more importantly, to the team for my Quid-silence of late. No excuse really, it's just that I lost my notes from our last game, and we scored so many goals that I couldn't remember who scored which goal when. All I can tell you is that the Force won 7-0, and it was a fun game to watch!

The real point of this article, however, is forward-looking. People keep asking me when the Force is playing their next game, which clearly suggests one or more of the following:

a) people have nothing else to say to me, or

b) there is a groundswell of support for the Force, and a rapidly expanding fan base hungry for news of their favorite Faculty team, and eagerly waiting to plan their social calendar around the Force's game schedule.

I choose to believe that the correct answer is "B."

Well, my friends, wait no longer. Here are the details on our upcoming games. Our next game is on November 2nd against Engineering Disaster at 11:30 pm. Why stay home glued to the television watching election coverage? It's not like the US election has any chance of actually being decided on Election Day anyway! It will

almost certainly be in re-count court for weeks to come! Besides, the fact that this election could even be CLOSE is just plain depressing! Force Majeure Hockey? Now that's exciting!

The following game against the Copaholics is at a far more civilized time, so you have absolutely no excuse! It's our last game before exams, so if you haven't been to a Force hockey game yet, then make The Law and Order Cup your first! On November 16th at 7:30, Force Majeure takes on the Fuzz! Bring your friends, bring your loved ones, bring your Criminal Code! But don't miss it. ■

Force Majeure Grinds Out A Victory

by Michael Hazan (Law III)

After splitting their first two games of the season, the Faculty's Ball-Hockey Squad, Force Majeure, scored a huge 5-3 victory last Monday night. Rookie Eric "The Machine" Martz's hat trick led the team to victory over Fin Givr at the Tomlinson Fieldhouse.

Martz showed the Coach why he is more suited to play forward than defence by scoring three second period goals to pace the banged-up squad. "I knew I had to pay my dues on D before really stepping up. I was happy I got

the opportunity and hope I can score a few more goals in the playoffs," said Martz after the game.

The ageless Daryl Davis scored the opening goal on an end-to-end rush surprising the goalie with a quick shot. Team veteran Pascal Zamprelli also scored off a nifty pass from "Broadway" Joe Adams in the first-period.

With Ami Wise (exhaustion), Tim Murphy (Ankle) and Jason Crelinsten (Planet of the Apes play practice) out of the lineup, Martz

and fellow rookie, Raffi Roditi showed why he and Martz made it out of training camp. "It was a very chippy game and I am glad we didn't sink down to their level of thuggery. We kept our composure and really came together as a team tonight" said Roditi.

Goaltender Ayman Daher was once again a tower of strength in goal stopping many difficult shots as the game progressed. ■

Chico Remains Undefeated

by Kenneth McKay (Law IV)

Chico Resch extended their unbeaten season on Sunday going 4-0 vs. the Blank Checks. The opposition, represented by the MBA faculty, was previously unbeaten and looked to claim the right of being atop the league standings.

Both teams came out skating hard in the early part of the game and neither team's defense offered many scoring chances until midway through the first period when Jason Crelinsten won a clean face-off putting the puck on Natt Brand's stick. Brand, with no consideration for the opposing goalie, put a bullet in the top corner. A few minutes later Matt Singerman took a pass from Sam Atkins and quickly maneuvered himself into the high

slot. With a quick flick of the wrist the puck was behind the goalie and Chico was up 2-0.

Several minutes later Atkins put a clean face-off to Ken McKay, who picked the low corner and the game was 3-0. The MBA team served Chico notice that they meant business and scored two unanswered goals and the verdict of the game became too close to call. Captain Ian Osellame decided to settle the matter and answered late in the third period with a slap shot from the point that Dinesh Melwani tipped passed the netminder closing the file on Chico's 4-2 victory.

With several seconds left in the match the Blank Checks decided it was time to show Chico how little respect they have for the law.

An opposing player committed an outrageous tort against Steve Gough, spearing him in the gut. The ensuing scrum heated up when Casey "the hangman" Leggett left the bench and decided to administer his own form of justice as judge and jury. Leggett, finding the opposing player in contempt, sanctioned him with a left jab that sent him sprawling on the ice. Captain Osellame - using the provocation defense - appealed to the refs to overlook Leggett's involvement. Apparently his plea was heard and Leggett will not be facing disciplinary measures by the league.

Chico looks to extend its unbeaten streak on Sunday the 7th of November at 6:30. ■

FOLLE, MENTEUSE, OU PIRE...

Par Caroline Briand (Law II)

Mercredi soir. J'écoutais la télé, rien en particulier ; en fait, je ne faisais que changer d'une chaîne à une autre. Je suis tombée par hasard sur une émission du type tribune téléphonique sur un réseau communautaire.

La discussion portait sur l'action de certains organismes communautaires dans des milieux défavorisés à Montréal, dont l'invité du jour était un représentant. Rien de spécial, jusqu'à ce que la voix d'une auditrice vienne briser le cheminement normal du programme.

La femme a d'abord refusé de s'identifier. Sa voix tremblait et y transparaissait un mélange manifeste et saisissant, au mauvais sens du terme, de douleur, de peur et de colère. Après quelques hésitations - on l'entendait ravalier des pleurs - elle articula simplement : "Le monsieur en studio, le monsieur avec la casquette rouge, m'a abusée sexuellement".

"Bon. C'est assez madame", a fait l'animatrice en coupant l'appel. Elle a cancané quelques rires : " Allez prendre un café, ma pauvre madame. Allez consulter quelqu'un. Vous avez vraiment un problème. " Son regard luisait d'indignation.

L'animatrice s'est alors tournée vers son invité, le monsieur à la casquette rouge en question, et s'est excusée auprès de lui. " Ça se peut tu dire des choses comme ça!" Son interlocuteur, avec l'air vaguement mal à l'aise, a conclu : "Ça arrive souvent, des gens qui font des fausses accusations comme ça".

Je n'ai pas voulu en entendre davantage. J'ai éteint la télé. J'étais dégoûtée de la façon dont l'auditrice avait été rabrouée alors qu'elle était visiblement sous le choc de sa propre déclaration, mais surtout de la légèreté avec laquelle l'animatrice en question a choisi de ne pas croire cette dame et même de la ridiculiser en ondes.

Il n'est pas ici question de soulever un débat quant à la nature de la présomption d'innocence, ou de l'application morale de ce concept en dehors de la sphère juridique.

Cet incident constitue plutôt un exemple d'un phénomène social et parfois - malheureusement - judiciaire qu'on pourrait qualifier de présomption de mensonge à l'égard des victimes (je ne cache pas ici ma réticence à utiliser le terme édulcoré de " plaignantes ") de violence sexuelle.

Si on vous vole votre sac à dos le soir

alors que vous circulez sur Dr. Penfield, personne ne contestera le fait que vous avez été victime d'un vol durant la période entre le moment de l'incident en question et celui d'une hypothétique condamnation criminelle du voleur. De plus, même si ce dernier est innocenté, des accusations ne sont jamais portées contre lui, ou il n'est, au bout du compte, jamais identifié, aucune personne possédant ne serait-ce qu'un gramme de raison n'osera jamais nier votre perte.

Si toutefois vous êtes la victime d'une forme quelconque de violence sexuelle, la perte, le préjudice que vous avez subi n'existera aux yeux de vos pairs que si vous réussissez à obtenir la condamnation, beyond reasonable doubt, de votre agresseur.

Autrement, c'est que vous être folle, menteuse, ou pire.

Ce que vous avez subi n'est jamais réellement arrivé.

Pour mieux prendre connaissance de telles situations et de leurs impacts sur les victimes : Lee Madigan, *The Second Rape : Society's Continued Betrayal of the Victim* (1991), aux éditions Maxwell Macmillan. ■

Thank you!

Un grand merci à tous les étudiants et toutes les étudiantes en droit pour le vase magnifique que vous m'avez offert à l'occasion de mon départ de la Faculté. Il va parfaitement dans le hall d'entrée de mon appartement. Je penserai à vous chaque fois que je rentre chez moi.

I will greatly miss the contact with students and candidates that was my daily fare at the Faculty of Law. The good news is that the Principal has to be at Convocation, so I will have the pleasure of sharing another happy moment with you.

- Victoria Meikle

Flying the Flag in Quebec: A Sponsorship Tale

By Mariam S. Pal (Law III)

Once upon a time there was a referendum in Quebec. Well it wasn't so long ago but 1995 was in the last century after all. Things looked bad. The "yes" side was winning. Somebody in Ottawa had what seemed like a good idea at the time. [don't they all?] Let's fly the Canadian flag in Quebec. Sounds good eh? Mais oui. In simple terms, the idea was that the Government of Canada would pay to have the Canadian logo [that stylish maple leaf on your GST refund cheque] prominently placed at public events. Expos games, the Montreal Jazz Festival, the Grand Prix... good stuff like that. If I understand it correctly, the logic was that merely knowing that the Feds had supported your favourite sports event would warm an indépendantiste's icy cold heart and convince them to vote "no". The programme came to be known as the Sponsorship Programme and it was placed inside the Ministry of Public Works in Ottawa. They're the guys who own all those Government of Canada buildings and do nice stuff like issue GST refunds and pension cheques. What this has to do with flying the flag is something I'm still trying to figure out. Public Works is a huge ministry situated in one of those dismal buildings in Hull so maybe they thought it was a good bureaucratic graveyard to bury the program in. Don't ask me, I'm just a law student.

In total, \$250 million was spent not just on making sure that the Canadian logo was out there at the hockey game but also on nifty souvenirs like leather jackets given out by the RCMP. My personal favourite is the golf balls embossed with Jean Chrétien's signature. It almost makes me want to take up golf. Most of the money was spent through a few Montreal based advertising firms. Earlier this year, the Auditor General of Canada, a feisty accountant by the name of Sheila Fraser told us in a report on the Sponsorship Programme that every rule in the book had been broken. To make a long story short nobody knew what happened to the money. There was an election coming up. The newspapers and the nightly news were

saturated with the story. And that's where the Gomery Commission comes in.

Public inquiries are as Canadian as the beaver and the loonie. Some commissions have really made a big difference in Canadian history such as the Bilingualism & Biculturalism Commission of the 1960s while others such as the recent Romanow Commission have yet to have an impact on all those people who still don't have a doctor. The Gomery Commission was created in February of this year and is headed by Justice John Gomery. He's a McGill law graduate and if you look on that wall outside the law library you'll see that he was even one of the donors who contributed to the library fund. So he must be a nice guy. But he has one tough job. He is in charge of the Commission that is supposed to get to the bottom of all this mess. Essentially, his mandate is to find out what happened, how it happened and how to make sure it doesn't happen again. The way I see it, there are two possible outcomes. The first is that it emerges that the Sponsorship Programme was an anomaly and that it won't happen again. The second possibility is a more frightening one and that is that the general state of the public service in Canada and the increasingly close ties between politicians and public servants means that another Sponsorship Programme could be created with equally disastrous wastage of public funds.

The Commission's hearings have been televised since early September and you can watch them on that channel that nobody ever watches-CPAC! I've watched them on and off and I must say that they've been quite interesting. Well, more interesting than my JICP reading. On the positive side, for anybody in law school it gives you a chance to watch a higher level of legal TV than Judge Judy or Law and Order. Each witness is questioned by the Commission's lawyers and then cross examined by lawyers who have been given standing. These include lawyers for the former minister of Public Works, Alfonso Gagliano and other well

known persons who want to protect their interests and reputations such as former prime minister Jean Chretien. Watching some of the civil servants testify would've been hysterical if it weren't so sad. Talk about having a deer in the headlights look. I really felt pity for them. On the other hand, the Clerk of the Privy Council, supposedly Canada's most powerful bureaucrat, impressed me with his extraordinary ability to duck any responsibility whatsoever. The guilt he said, was with the Ministry of Public Works, and that is that. I suppose that's how you get to be Canada's top dog, shifting the blame fast and loose. In a hilarious exchange with the Commission lawyer, he made a statement and then immediately after said that he wanted to clarify it. The lawyer replied that his statement was clear. In response the Clerk of the Privy Council asked to be allowed to obfuscate! I shall file that one away for the future. You never know, one day I might be top dog and need a good line like that.

Perhaps I'm just cynical but I really wonder if anything will really change as a result of the Commission's diligent work. It seems to me that the Canadian electorate, by bringing in a minority government, already cast their vote as to who was responsible for the sponsorship mess. On the first day of the Commission's hearings, all the news reports were buried in the middle pages of the newspaper and the story was last on the lineup of the national news. The main point that all of them made was that more money would be spent unraveling the sponsorship scandal than had been wasted in the first place. I hope that the mechanics of government in Ottawa will change as a result of all this but a little voice inside me keeps on saying "I don't think so". It reminds me of the old folk song from elementary school that goes "When will they ever learn? When will they ever learn?". Meanwhile, the hearings are on TV every day and they will be moving to Montreal in the new year. I will keep you posted. ■

Grasping Quebec Nationalism: A Starting Point

by Marcelo Garcia R. (Law II)

Mr. Morissette,

First of all, I would like to thank you for your article on "how to get Quebec nationalism". Your constructive attitude is appreciated in what has often been an inquisitorial movement against pro-sovereignty articles, and general criticisms pointing out the lousiness of "passive bilingualism" in the Faculty.

Although your idea to read Kenneth McRoberts' book is a great starting point, let me suggest that any attempt to grasp Quebec nationalism is misdirected if "Québécois" identity is ignored or not, I think that we can objectively say that their demands are denied. I recognize that this voyage seems rather perilous for anyone who considers Quebec "just another province", but it is a necessary step toward a more constructive dialogue that will eject English Canadians as a threat, are an assertion of "Québécois" sense reductionism and incomprehension. Of course, great efforts will be required in order to step out from the dominant analytical approach of "us" versus "them" used in political discourse. Ultimately, whether one agrees with Quebec's political independence from Canada or not, the mere act of acknowledging that there is in fact a "Québécois" culture and identity based on an idea of nationhood is, by any standard, a sign of progress.

My purpose here is not to develop on the more substantive debates that have shaped "Quebecois" identity over time or those political events that have increased support for sovereignty (Colonial roots, socio-economic factors, Canadian constitutional framework, Meech Lake, Charlottetown, and Bill C-20, among others). However, I believe that the following ideas can serve as starting points, and perhaps necessary preliminary steps, in adopting a more open and less politicized approach in the process of grasping Quebec nationalism:

1. To speak French with more than a minimum level of proficiency and to interact with Quebec French-speaking citizens on a regular basis rather than on an incidental one.

This will allow anyone to read their newspapers, to get familiar with their literature, poetry and music, to listen to their radio stations and to watch their TV programs. If you are lucky, you might even be able to attend their great plays and musicals on St-Denis.

A continuous interaction with Quebec's cultural expressions will likely result in an empirical realization that there is in fact a real and distinct "Québécois" culture and that the French language serves as its foundational tool.

The use or denial of "Quebecois" identity for particular political agendas is simply not relevant. In fact, there is nothing wrong in acknowledging that, sociologically speaking, Quebec is a nation.

2. To give up on the idea of calling Quebec-born citizens "French-Canadians" or labelling PQ supporters as "separatists".

This is a very important step towards constructive dialogue. The notion of "French-Canadians" has disappeared from Quebec's political glossary since the mid-1960s, and even federalists have adopted the term "Québécois" in their interactions. Even more important, this notion has become more and more territorial-based and refers primarily to someone who uses the French language in

the public sphere. Obviously, there is an ethnic component to the notion of "Québécois" in the sense that it appeals to a certain history and to a certain ethnic group. However, in a more contemporary setting, it is not an exclusive term that prevents other minorities in Quebec to become part of what "Québécois" identity is all about.

As for the use of the term "separatists" to refer to PQ supporters, it is an aggressive and reductionist label that focuses solely on the act of separation or destruction. Whether we subscribe to the PQ project or not, I think that we can objectively say that their demands are denied. I recognize that this voyage seems rather perilous for anyone who considers Quebec "just another province", but it is a necessary step toward a more constructive dialogue that will eject English Canadians as a threat, are an assertion of "Québécois" sense reductionism and incomprehension. Of course, great efforts will be required in order to step out from the dominant analytical approach of "us" versus "them" used in political discourse. Ultimately, whether one agrees with Quebec's political independence from Canada or not, the mere act of acknowledging that there is in fact a "Québécois" culture and identity based on an idea of nationhood is, by any standard, a sign of progress.

In contemporary political discourse, the pervasiveness behind the use of labels to describe political views is often over-looked. Labels (leftists, communists, red-necks, etc.) contain a divisive element that tends to shape and oftentimes diminish the conception that we have of those who do not share our views. It is a dangerous path and an element of regression rather than progress. ■

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From CEGEP To Law School - What, Me Worry?

by Hinda Rabkin (Law I)

After having read 3 issues of the Quid Novi, and having finally understood that the journal itself defines randomness, I decided to give writing an article for this journal a shot. It's going to take me a lot of courage to send this in (and if you're reading this it's because I found it somehow, somewhere, probably hidden deep in my closet with my N'sync T-shirt). Anyway, I will try to express myself on how it feels to be a student from CEGEP - still just 18 years old (and I hear I am not the youngest!) -- in Law school surrounded by much more educated and experienced people.

I have never actually researched if Quebec law faculties are the only ones in the world who take students without an undergraduate degree, but I imagine that it is so. I am grateful for this policy. It's awesome to be given the opportunity to mingle and meet with so many people of different ages and backgrounds and to learn about an entire new system (or systems because of course this is a much lauded trans-systemic program). I am enjoying learning a lot about various topics which I know nothing about and I am especially enjoying understanding

more articles in section A of the newspaper these days (yes, the days when I only read comics have come and gone -- well, almost). I find the teachers are very inviting and dynamic; not at all the intimidating bunch that appeared in my pre-law school nightmares. And the other 1st year students are cool and especially knowledgeable about a wide range of subjects.

During my interview for law school, I was told that most people would be older and more educated than myself and was asked my opinion on how to deal with that. I don't remember my answer (actually the whole interview is kind of a blur) but I remember looking forward to meeting different people and sharing my distinct and young viewpoint. Yes, it can be intimidating to open your mouth and talk about a socio-political legal issue when you are surrounded by 25 poli sci majors, but it's been great that no one has been patronizing or condescending. It's amazing to have conversations with people who already have BA's and MA's and who have traveled across the world as part of their human rights vision or for their own attempts at self-discovery. The best part of it is that they don't make me feel much younger,

immature or uneducated (except for sometimes when the issues and terms used are those that I have never heard of before, especially in Constitutional class debates.)

It has been said that the problem with some of us CEGEP kids is that we lack confidence in the sense that we feel intellectually inferior vis-a-vis other students (ok just me, I don't want to represent the others). But it can be quite difficult to summon up the necessary confidence. I do not have the extensive education all the 'older' students can rightfully boast of. My very first law school assignments were also my first assignments in a university setting. However, students from CEGEP do graduate just like everyone else and I hear that you often can't tell the CEGEP students apart unless we actually tell you (or if we're sporting pig tails).

In the end, every person -- those with 3 degrees and counting, and those who are still very proud of their DEC -- has something to contribute and I feel grateful that the faculty and the student body make room for everyone's contribution, one way or another. ■

Au coin de Saint-Laurent et Prince Arthur: Une histoire de "bonne samaritaine"!

par Delphine Néant (Law II)

Samedi soir - 19h17- Soirée sympathique en perspective - Absence profond d'argent pour en profiter - Visite d'un guichet automatique de rigueur

J'arrive donc à cette merveilleuse machine distributrice de « bonheur temporaire et de mal de crâne assuré le lendemain ». Un jeune homme est en train de déposer de l'argent sur son compte. J'attends patiemment en « utilisant mes yeux ».

Grand mec, crâne rasé, boucle d'oreille dans le sourcil, traits du visage fort agréables (si vous me demandez mon avis)...

Départ plutôt brutal, il avait l'air pressé!

Mon tour. Je m'avance alors tranquillement près du guichet. L'écran me

fait de grands signes : « souhaitez-vous une autre transaction? »...je regarde autour de moi (comme en attente de l'aval de quelqu'un) et réponds avec force « non »! Une carte sort alors de la fente... Ne pouvant être la mienne, je conclus que le propriétaire n'est autre que le mec au sourcil percé.

Ni une ni deux, je m'élance! Porte de la banque. Je me re-lance!

Telle une gazelle poursuivie par un lion ou, plus probable, telle une étudiante essayant d'attraper son bus à 7h56 du matin, me voilà à la folle poursuite du mec au sourcil percé.

Premier stop - carrefour - coup d'œil rapide - gauche - droite - le voilà... un crâne rasé avait fait toute la différence parmi la foule de la rue Saint-Laurent...

Course folle ... 20 secondes plus tard, je récoltais un grand sourire et un merci... Ah quelle « bonne samaritaine » je faisais! Je me félicitais d'avoir mis en pratique un concept étudié en cours de « tort ». Comme quoi le droit et la réalité font parfois bon ménage!

Un jour plus tard, je trouvais dans mon portefeuille deux reçus datés de quelques minutes d'intervalle mais du même jour (ce fameux samedi) : l'un m'appartenait et l'autre indiquait une valeur de \$ -63,000...

J'ai quelques doutes sur le qualificatif d'« héroïque » de mon acte de bonne samaritaine! ■

Students in Hot Water after Scandal Engulfs LSA

by Jeff Roberts (Law IV)

During his election campaign last spring, LSA President Mike Hazan repeatedly promised that he would restore a sense of competence and integrity to student government. Sadly for Hazan, hopes for a scandal-free year have already been dashed amid the growing controversy that has engulfed one of the LSA's student clubs.

The firestorm was touched off at last week's Council meeting when it was revealed that the LSA had allocated \$200 to the newly-minted McGill International Law Federation. The otherwise banal gathering exploded into recriminations after 2nd-year councilor, Hari Suthan, attacked the executive for allowing two fourth-year pranksters to use student money to start an MILF club.

The club's leaders, Aaron Chase and Mike Brazao, vigorously denied any double-

entendres lay behind their endeavour's curious acronym.

"What are you talking about?" said Brazao, "This is just another one of those smear campaigns that's denigrating our faculty. We've always been into international law."

"Yeah," added Chase, "Like Denmark. I've always wanted to go there and study gender and social norms."

Despite their protestations, further suspicion clouded the duo and their club when the LSA's VP Clubs, Liat Tzoubari, released MILF's fall budget. Projected expenses included Jergen's lotion, large quantities of Kleenex, and a "field trip" to the Westmount Tennis Club.

Possible disciplinary action is looming as Associate-Dean Walsh declared she was

ready "to rid the school of this puerile bullshit once and for all," and said she looked forward to the day when the Quid would revert back to carrying pieces that reflected literary, not literal, wanking.

The student body's response to the scandal was mixed, as reactions ranged from calls for a human rights hearing to whispers of "where can I join?"

Many students were simply blasé about the incident. When asked to comment on Brazao and Chase, second-year Mike Elridge remarked, "Who are these people? I mean what the fuck are they still doing here? I'm sure as hell not going to be hanging around this place a couple years from now writing for the Quid or something. It's actually kind of pathetic."

Further details about the MILF scandal are still pending. ■

Wal-Mart: Everyday low prices, everyday low morals?

Par Marc-André Séguin (Law II)

Wow, I thought I had seen it all. Child labour, exploitation, hypocritical commercials, intimidation of union leaders... Wal-Mart had everything to brag about on unethical commercial behaviour.

Vous ne pouvez qu'imaginer ma surprise lorsque j'ai découvert les nouvelles ambitions de la plus grosse multinationale au monde: la destruction des patrimoines historique et culturel, en échange pour de meilleures aubaines au profit d'acheteurs déjà étouffés par la surconsommation. En effet, notre *happy face* préféré a récemment ouvert un nouveau magasin à Honolulu, Hawaii. Le hic, c'est que pour construire cet énorme magasin de 800 employés, la compagnie a dû déterrer 44 corps d'un ancien cimetière local.

Some of the remains lying in the now desecrated burial site had been there for as much as 150 years, and, as the store opened last week, these remains were left in a dark air-conditioned trailer not too far from the con-

struction site. Protesters, appalled by the display of tremendous disrespect for their ancestors, stood outside the store as a crowd of consumers rushed inside to enjoy the low price deals.

Un manque de respect injustifié de la sorte ne peut être passé sous silence. Jusqu'où allons-nous laisser ces géants envahir l'histoire, les cultures et la spiritualité des peuples? N'allez pas penser que je m'oppose au libre-marché, mais n'est-il pas raisonnable de croire que des limites doivent être posées pour encadrer ce dernier? N'est-il pas justifié de croire qu'on ne devrait pas détruire les vestiges de nos peuples simplement pour économiser \$0,25 en achetant du détergent à vaisselle ou de la pizza congelée?

These corporations should not have the authority to invest and build stores, sweatshops or factories wherever they want and without any consideration for local traditions. And yet globalization, with the orientation it has taken over the years, shows little hope for

those who oppose such a way of doing business. Deregulation, being the common practice in most countries worldwide, allows such offenses and encourages this new kind of barbaric invasions.

En attendant l'émergence d'un véritable débat sur la question, Wal-Mart continue sa campagne de recherche aveugle pour le profit. Le site archéologique de Teotihuacan au Mexique s'apprête à devenir, lui aussi, l'hôte d'un des magnifiques bâtiments gris, rouges et bleus de la multinationale. Les consommateurs mexicains pourront dorénavant acheter leur papier de toilette au bord des pyramides aztèques de la région. Il reste à voir si ces citoyens accepteront d'échanger leur mode de vie centenaire pour des aubaines quotidiennes. On n'arrête décidément pas le progrès.

That happy face can smile all it wants, but it is now more obvious than ever that this little smirk hides but one thing: greed. ■

DOSSIER DÉBATS FACE-À-FACE...

Est-ce qu'un cap salarial devrait être imposé dans la ligue nationale de hockey ?

- POUR (Frédéric Côté - Law II) -

- CONTRE (Jean-François Bisson-Ross - Law II) -

Comme le disait le Lord Denning du hockey professionnel, Jean Perron : faut pas chercher de midi à l'an quarante; un plafond salarial serait l'avènement de la démocratisation du hockey professionnel.

En imposant une masse salariale maximale à toutes les équipes, on force le retour à un niveau de jeu équilibré. En présumant que les joueurs n'accepteront pas de réduction de salaire (présomption irréfragable), on peut affirmer que le temps où certaines grosses équipes avaient leurs trois premiers trios remplis de vedettes serait révolu. Le niveau de jeu se trouverait donc à être rehaussé puisque le talent serait réparti entre les équipes.

De plus, avec égard pour mon estimé collègue qui n'avance pas moins des arguments aux allures de ceux des plaideurs dans l'affaire Westendorp, la clause pénale assortie à un éventuel dépassement de la masse salariale plafond n'est qu'une contre-proposition de l'association des joueurs, un de ces syndicats de gauche, pour reprendre ses analogies.

Cet équilibre retrouvé assurerait aussi longue vie aux petits marchés. Sachant que le cœur et les tripes de ce sport reposent sur ces petites villes partisans, la ligue nationale se retrouverait soulevée par un nouveau vent de passion sportive qui, tout en emportant le travail du commissaire Bettman, s'empresserait de redorer le blason terni de ce sport jadis national. Avec le plus humble respect pour les personnes concernées, je tiens à affirmer que cet argument est approuvé par l'honorable Marc-André Séguin, qui pleure encore le départ des Nordiques de Québec (une autre histoire qui s'est terminée en Shark [Tail]).

Finalement, toujours à l'avantage des partisans, il est raisonnable de penser que l'imposition d'un plafond salarial aurait comme conséquence collatérale de faire diminuer le prix des billets. Comme les propriétaires ne seraient plus dans l'obligation de charger des prix exorbitants aux spectateurs pour financer les salaires dignes des dommages exemplaires qu'a dû verser Ford dans l'affaire des Pintos, le prix des billets diminuerait de façon inversement proportionnelle aux ventes de hot dogs ainsi engendrées.

Pour répondre à la première ligne de mon distingué collègue, oh comment renseigné pour pouvoir citer Jean Perron, lui-même répondant : y a pas inventé le bouchon à quatre trous!!! Bien qu'étant des conséquences logiques de premier niveau, les arguments de mon partenaire sont inadaptés

à la réalité : il ne tiennent pas compte de ce qu'est la ligue nationale et de ses problèmes de mauvaise administration.

En effet, les montées salariales des joueurs qui amènent les propriétaires à payer 70% de leur revenus en salaire n'est que dû à la mauvaise gérance des propriétaires qui n'ont pas suivis la ligne directrice qu'ils s'étaient donnés après 1994 alors que Joe Sakic, Teemu Selanne et Eric Lindros avaient reçu des offres qui avoisinaient les huit millions de dollars, ce qui avait entraîné un effet domino chez les propriétaires fortunés.

Mon collègue devrait aller offrir ses conseils au maire d'Huntingdon, qui lui aussi propose des solutions draconiennes brimant la liberté pour des problèmes qui n'existent pas.

D'autant plus que la ligue se doit d'être compétitive avec le marché de l'Europe et la menace, peut-être un jour crédible,

d'une nouvelle ligue de hockey professionnelle majeure. L'offre jouerait bien son rôle, ne serait-ce de l'ingérence des propriétaires, l'ouverture de petits marchés sans futur (grande idée de Gary Bettman), des agents affamés et de l'union des joueurs, qui a forcé plusieurs de ceux-ci à refuser des contrats jugés trop

L'équilibre des équipes passe par un bon marché et un bon système bien plus que par la masse salariale plafonnée. Soumis respectueusement, mon collègue à autant de vision que le non moins regretté (ce qui en fait de la doctrine valide) Pierre-Elliott Trudeau qui a construit l'aéroport de Mirabel.

Bref, il ne sert à rien d'inventer des solutions qui ne servent qu'à créer d'autres problèmes quand la vraie solution est si simple; détrôner Bettman et renforcer le consortium entre les propriétaires. Dans l'état actuel des choses, j'y penserais deux fois avant de négocier le montant d'un présumé plafond salarial, ce qui nous assurerait d'au moins une décennie de hockey problématique avec des propriétaires qui de toute façon dépasseront le

Pour conclure, même mon estimé collègue ne peut nier que ces vedettes sur patins y ont quand même à gagner puisqu'en sacrifiant quelques millions par année, ils sauront à nouveau soulever les foules (pas celles de Mirabel) et ainsi retrouver leur statut de héros dans le cœur des partisans. ■

La sélection de l'équipe de deux personnes représentant McGill à la finale nationale aura lieu en janvier. Tout étudiant de la faculté pouvant s'exprimer en français, qu'il soit francophone ou non, peut participer.

L'année dernière, l'équipe de McGill, composée de deux étudiants de 1ère année, est terminée deuxième et s'est méritée un prix de 500\$.

Ces débats vous intéressent ? Inscrivez-vous à la compétition Face-à-Face en envoyant votre nom et celui de votre coéquipier au courriel suivant : faceafacemcgill@hotmail.com.

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Black Law Students' Association of Canada : 13th Annual Conference

by Leila Jawando and Stéphanie Otou (Law II)

The conference entitled "The Black Legal Presence: In Sight and In Mind" focused generally on the lack of visible minorities represented in the Canadian legal profession. Though it was originally slated to take place in February of this year, the Black Law Students Association of Canada soon discovered it was at the mercy of nature when Nova Scotia was hit with a devastating snowstorm. Eight months later, BLSAC finally made its way to Halifax to attend the conference as scheduled.

Pour ceux qui ne le savent pas, la branche de McGill n'est qu'une partie de l'Association des Étudiants Noirs en Droit du Canada, une organisation nationale regroupant les diverses universités du pays, et dont le but est de promouvoir au mieux la diversité culturelle en milieu juridique. La participation des étudiants de McGill permet entre autre d'apporter à la conférence une perspective civiliste et transsystème. Une délégation de six étudiantes de la faculté a assisté aux séminaires et présentations, représentant en outre la province du Québec, autrement absente.

The keynote speech was delivered by the Honourable Donald H. Oliver Q.C. who was called to the Senate by Prime Minister Mulroney in 1990. Senator Oliver spoke of the need for the legal community to be representative of the general public it purports to serve. His lecture also addressed cases in Canadian jurisprudence, such as *Christie v. York* and *Bhaddauria v. Seneca College*, which speak to discrimination in the court system. Senator Oliver went on to argue for the creation of a separate tort of discrimination. The goal of such a measure would be to ensure that cases alleging discrimination would be dealt with by the common law court system instead of the provincial Human Rights Commission's tribunals.

Des représentantes du Département de la Justice du Canada étaient en outre présentes afin d'exposer aux participants les différentes opportunités de travail au sein de la fonction publique canadienne : un point de vue différent qui n'en semblait pas moins intéressant. Me Darlene Lamey, avocate en litige civil gouvernemental, et sa collègue Ronda Vanderhoek, procureure général dans le domaine des « pêcheries aborigènes », ont fait état de l'importante différence qu'il existe entre la pratique privée et la pratique publique, bien que les standards de rigueur et d'excellence soient, dans les deux cas, primordiaux. Il semble par ailleurs que le gouvernement fédéral ait mis en place un programme anti-discriminatoire qui encouragera, on espère, une plus haute postulation de nouveaux gradués.

In another presentation, BLSAC members learned a bit about how the Nova Scotia Barrister's Society (NSBS) has responded to the needs of its community. After the famous decision *R v. Donald Marshall*, the Haligonian community was in a state of social uproar. Coupled with some unfortunate racial remarks by the Premier and the fact that at the

time there were very few visible minorities practicing law in the province, the Barrister's Society decided to take action. They wanted to discover why, despite the large Indigenous Black and Mi'kmaq communities in the area, many students from the communities were not studying law. Furthermore, they wanted to know why the graduating law students chose to leave home and to not practice in Nova Scotia.

Consequently, a study was commissioned that was meant to serve as a mirror through which firms could scrutinize their hiring practices and their rates of retention of visible minority lawyers. Though Nova Scotian private firms are not required by law to do something about their lack of representation, they do see the value and necessity of having their practitioners be representative of the communities they serve. The same can be said of the Federal Department of Justice.

Bien que la conférence ait été ponctuée de séminaires et de séances d'informations juridiques, nous avons amplement eu le temps ►

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d'apprécier la magnifique ville qu'est Halifax : promenades au bord des quais, dégustation de mets, fruits de mer ainsi que l'ambiance légère des provinces maritimes étaient au rendez-vous. BLSAC was sure to include tours of Halifax and of Preston, home of the Indigenous Black Community of Nova Scotia.

« *Tout vient à point à qui sait attendre* » dit un célèbre dicton français. Le succès de cette 13ème conférence en est une illustration vivante. Après huit mois d'attente et en dépit

des caprices de mère-nature, cette aventure fut des plus enrichissantes. En terminant, nous sommes fières d'annoncer que trois des membres du groupe de McGill ont été élues au Conseil Exécutif de l'organisation: Kathleen Thoby et Lainy Destin serviront en tant que VPs- Québec et Stéphanie Otou sera la VP – Francophone.

BLSA McGill aimerait remercier tous les étudiants qui ont rendu ce voyage possible, en nous encourageant l'an dernier, lors de nos diverses campagnes de levée de fonds.

We would also like to extend our most sincere gratitude to the LSA Council and to Dean Kasirer and the Dean's office, without whom the attendance of BLSA McGill might not have been possible.

Pour toutes questions, commentaires, discussions ou suggestions, contactez nous au blsacmcgill@yahoo.ca, et partageons, ensemble, les joies de la diversité culturelle dans le monde juridique. ■

Là où le soleil se couvre de poussière

by Jan Jakob (Bornheim, Cologne, Germany)

J'étais plu par l'éloge de la politique du gouvernement rouge-vert allemand dans le dernier article d'Émélie-Anne Desjardins. Moi, je suis plus pessimiste.

En dépit de tous les progrès, il y a deux grands problèmes universels qui bloquent une politique écologique persévérante: la maintenance aux traditions surmontées et la supériorité de l'économie sur l'écologie.

Émélie-Anne mentionne que l'énergie éolienne est utilisé pour surmonter le déficit naturel d'Allemagne, l'absence des ressources naturelles avec l'exception du charbon. Mais le fait que le charbon soit la seule ressource naturelle créait une situation, où tout une région, le bassin de la Ruhr dans la province de la Rhénanie du Nord - Westphalie, était dépendante sur l'exploitation du charbon. Le même gouvernement qui encourage l'énergie éolienne paie des subventions directes de plus de 82.000 € (130.000 \$ CAN) annuellement pour un travailleur dans l'industrie d'exploitation du charbon. C'est un total de trois milliards € (4.7 milliards \$ CAN). Il serait plus simple et à meilleur marché de donner l'argent directement aux travailleurs. Mais, le milieu ouvrier du bassin de la Ruhr avait toujours voté les sociaux-démocrates. Ainsi, c'est compréhensible que le Parti social-démocrate d'Allemagne (SPD), le parti de Schröder, n'a rien intéresse à interrompre cette habitude. Par conséquent, elle ne veut pas faire la plus petite chose qui pourrait exaspérer la population du bassin de la Ruhr.

D'un autre côté, c'est vrai qu'une litre d'essence coûte deux CAD. Le problème est que dans toute l'Europe le prix pour le diesel est significativement plus bas. Une voiture qui utilise le moteur diesel produit considérablement plus des émissions. L'effet de la

subvention du diesel est que 40 pour cent des voitures européennes ont des moteurs diesels. On peut questionner pourquoi le prix de diesel est bas lorsque les gouvernements et les membres de parlement savent cet effet. La réponse est simple. Les trucks ont des moteurs diesels aussi et personne ne veut faire tort à l'industrie du transport. Également, ce démontre la schizophrénie de la politique européenne. On veut supporter les sociétés des trains et diminuer les émissions du trafic mais on ne veut pas créer les désavantages nécessaires aux entreprises du transport.

Pour la plus part, on construit un antagonisme entre l'économie et l'écologie, où l'environnement est secondaire à l'industrie et l'économie. Émélie-Anne a absolument raison quand elle souligne la création des jobs dans l'industrie écologique. Toutefois, tant que la perception publique se concentre aux 53 milles emplois dans le secteur du charbon malgré les 150 milles emplois dans le secteur de la technique écologique, la politique écologique continue d'être une politique des petits bas. Le SPD et son partenaire Les Vertes peuvent être le mouvement le plus progressif, tant qu'ils doivent gagner des élections ils ne vont pas toucher les mines des charbons. Je suppose que chaque gouvernement qui osait limiter l'exploitation du pétrole en Alberta sera affronté avec le même dilemme (notez mon espérance que le Parti progressiste-conservateur d'Alberta ne va pas gouverner à l'éternité).

Émélie-Anne écrit que l'Allemagne pouvait réduire sa pollution par dix-huit pour cent entre 1990 et 2004. C'est un fait et c'est vrai. C'est exactement que le gouvernement allemand dit quand il est demandé au sujet de ses succès pour l'environnement.

Cependant, il y a une raison simple pour ce déclin: la rupture totale de l'économie dans l'ancienne République démocratique d'Allemagne. Le fait qu'il n'y ait presque aucune fabrique dans les provinces d'Est qui est plus vieux que quatorze ans simplifie une basse émission. Mais depuis la fin des années quatre-vingt-dix les émissions stagnent ou se lèvent.

Néanmoins, l'Allemagne a des émissions qui sont plus bas que le niveau prévu par le protocole de Kyoto. Ceci créait l'intérêt des commerçants puisque l'article 17 du protocole de Kyoto stipule que « les Parties visées à l'annexe B peuvent participer à des échanges de droits d'émission aux fins de remplir leurs engagements au titre de l'article 3. » L'approche de Kyoto, la collaboration internationale qui est promu avec l'article 17, est louable. Mais moi, je ne préférerais aucune collaboration sur cette collaboration qui autorise quelques pays de produire plus émissions comme prévu. Mes raisons : ces engagements sont définis avec les chiffres de 1990. Évidemment, l'Allemagne n'est pas le seul pays qui était désindustrialisé après 1990. Ce veut dire qu'il y a des pays comme la Russie ou l'Allemagne qui peuvent remplir ses engagements avec un effort minimal. Par conséquent, ils pourraient vendre des droits de polluer. Des problèmes arrivent quand ces pays vont voir des reprises économiques. Des droits d'émissions sont déjà vendus. Mais, j'ai peur qu'on va, comme toujours, préférer l'économie sur l'écologie. Puis, le protocole va être papier de rebut et tous les progrès seront renversés.

Je souhaite des commentaires à : janbornheim@gmx.net. ■

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